

LEONARDO M. RAPADAS  
 United States Attorney  
 ERIC S. O'MALLEY  
 Assistant U.S. Attorney  
 DISTRICT OF THE  
 NORTHERN MARIANA ISLANDS  
 Horiguchi Building, Third Floor  
 P.O. Box 500377  
 Saipan, MP 96950

Telephone: (670) 236-2980  
 Fax: (670) 236-2985

IN THE UNITED STATES DISTRICT COURT  
 NORTHERN MARIANA ISLANDS

UNITED STATES OF AMERICA,

Plaintiff,

v.

SAMUEL RAYBURN,

Defendant.

Criminal Case No.: 07-00019

**GOVERNMENT'S OBJECTION  
 TO DEFENDANT'S PROPOSED  
 DIMINISHED CAPACITY  
 INSTRUCTION**

Defendant proposes to use testimony of lay witnesses to support a Diminished Capacity instruction as he so advised this Honorable Court on September 10, 2007. It is the government's understanding that defendant may claim he suffers from an *abnormal mental condition* and call lay witnesses in support of the claim. The defendant must offer relevant and reliable evidence entitling him to an "*abnormal mental condition*" diminished capacity instruction.

A defendant who seeks to present mental-condition evidence must show that the specific medical evidence offered as pertinent to his state of mind is relevant to the requisite intent; that the probative value is not substantially outweighed by confusion or delay, and the expert testimony is scientifically reliable and helpful to the jury. Fed.Rules Evid.Rules 401, 403, 701, and 702.

"Diminished capacity is directly concerned with whether the defendant possessed the

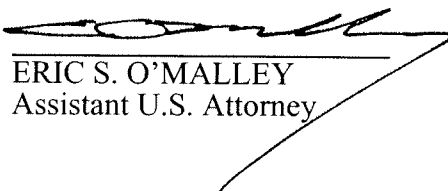
1 ability to attain the culpable state of mind which defines the crime.” United States v. Twine, 853  
2 F.2d 676, 678 (9<sup>th</sup> Cir. 1998). However, a defendant’s alleged impaired mental capacity should  
3 be admissible to arguably defeat a mental state requirement of a specific intent crime only if such  
4 evidence is provided by relevant and reliable expert testimony.

5       Psychiatric testimony may be admissible as was the case in Twine, 853 F.2d at 676-78, in  
6 which the district court considered the defendant’s diminished capacity defense. As well,  
7 psychiatric testimony may still be inadmissible as irrelevant and prejudicial as was the case in  
8 United States v. Pohlot, 827 F.2d 889 (3<sup>rd</sup> Cir. 1987)(psychiatric evidence relating to defendant’s  
9 subconscious motivation did not support legally acceptable theory of lack of mens rea); and  
10 United States v. Schneider, 111 F.3d 197 (1<sup>st</sup> Cir. 1997)(limited relevance of expert medical  
11 testimony proffered as pertinent to defendant’s state of mind was substantially outweighed by  
12 capacity to mislead jury into thinking that evidence mitigated the offense).

13       In this case, the defendant has not proffered any expert witness. He instead intends to  
14 call lay witnesses, whose qualifications are unknown, to testify about any alleged abnormal  
15 mental condition of the defendant in support of a diminished capacity instruction.

16             Dated this 11<sup>th</sup> day of September 2007.

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18                             Respectfully Submitted,  
19                             LEONARDO M. RAPADAS  
20                             United States Attorney

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22                             ERIC S. O'MALLEY  
23                             Assistant U.S. Attorney  
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